



23 DEC 2005

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NEEDLE & ROSENBERG, P.C.
SUITE 1000
999 PEACHTREE STREET
ATLANTA, GA 30309-3915

In re Application of FLANIGAN et al :
U.S. Application No.: 10/539,178 :
PCT Application No.: PCT/US03/40278 :
Int. Filing Date: 17 December 2003 : DECISION
Priority Date Claimed: 17 December 2002 :
Attorney Docket No.: 21101.0047U2 :
For: RAPID DIRECT SEQUENCE ANALYSIS :
OF MULTI-EXON GENES :

This is in response to applicant's "Petition to Correct Filing Date Under 37 CFR 1.10(c)" filed 25 August 2005, which is being treated under 37 CFR 1.10(d). No petition fee is due.

BACKGROUND

On 17 December 2003, applicant filed international application PCT/US03/40278, which claimed priority of an earlier United States application filed 17 December 2002. The thirty-month period for paying the basic national fee in the United States expired on 17 June 2005.

On 16 June 2005, applicant purportedly filed national stage papers in the United States Designated/Elected Office (DO/EO/US) via the Express Mail Post Office to Addressee service of the USPS ("Express Mail"). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 25 August 2005, applicant filed the present petition under 37 CFR 1.10(d).

DISCUSSION

MPEP 1805 states in part, "[T]he 'Express Mail' provisions of 37 CFR 1.10 apply to the filing of all applications and papers filed in the U.S. Patent and Trademark Office, including PCT international applications and related papers and fees."

37 CFR 1.10(d) states,

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail"

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mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

With regard to item (1) above, the petition was filed promptly after applicant became aware of the accorded International Filing Date.

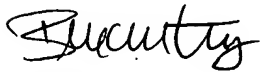
With regard to item (2) above, a review of the transmittal letter and the copy of the Express Mail label reveals that the Express Mail mailing label number was placed on the correspondence prior to the original mailing by Express Mail.

With regard to item (3), applicant has made a sufficient showing that the correspondence was deposited in Express Mail on 16 June 2005. Specifically, the copy of the Express Mail label bears a USPS date stamp of 16 June 2005.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.10(d) is GRANTED.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision, including preparation and mailing of a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 must be filed.



Bryan Tung
PCT Legal Examiner
Office of PCT Legal Administration

Telephone: 571-272-3303
Facsimile: 571-273-0459